IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 352 OF 2006
IN
ARBITRATION PETITION NO. 34 OF 2006
IN
AWARD NO. OF 2006

FRANCIS D'SOUZA .. APPELLANT.

V/s.

1. Nidhi Investments and Anr. .. Respondents.

Mr.P.N.Mody i/by M/s.M.Dhruva & Co.for the Appellant.

Mr.Zal Andhyarujina i/by M/s.Goenka Law Associates for the Respondent No.1.

Mr.P.N.Bhagat i/by M/s. Vasant & Co. for the Respondent No.2.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 15th SEPTEMBER, 2006.

P.C.:

. We heard Mr.P.N.Mody, the counsel for the Appellant for some time.

2. The claim of the Appellant was dismissed by the Arbitral Tribunal on the ground of limitation.

3. In Appeal, the Appellate Bench has modified the finding of the Arbitral Tribunal by holding that the claim was within limitation and partly granted the

Appellant's claim. However, for rejection of the part of the claim, the Appellate Bench held that the suit claim relates to the transaction which is not part of the share transaction. Nothing has been shown to us to the contrary.

4. We find ourselves in agreement with the consideration of the order by the Appellate Bench, wherein the Appellate Bench observed thus :-

> "Substantial payments were given by the Appellant to the Respondent No.1 as recorded by the Arbitral Tribunal, on the face of huge pre existing credit balance. This has resulted in impugned outstanding as per the foot of the ledger account. It was observed by the Arbitral Tribunal that Appellant made payment of entire bill at certain occasion; inspite of there being existing credit balance and Appellant has no cogent explanation to offer in respect of the same. The said credit balance at the foot of the ledger account as claimed therefore, is evidently result of such excessive payments made from time to time to the Respondent No.1 for considerations other than share transactions. Needless to say, money claim having no rational connection with share transaction carried out earlier or subsequently cannot possibly be brought within the ambit of bye-laws 248 to enable the Arbitral Tribunal to usurp jurisdiction."

5. The Appeal does not have any merit. Dismissed in limine.

(R.M.LODHA,J)

(S.A.BOBDE,J)

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